IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

APPEAL FROM ORDER NO.469 OF 2006

Mr.Cyril D'Costa : Appellant
(Orig.Applicant)

V/s.

Pravinkumar Pravinchandra S/o. Bhimji
Karsondas & Ors. : Respondents
(Orig.Defendants)

And

Court Receiver, High Court, Bombay. : Respondent

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Mr.Jeevan S. Goge for the appellant.
Mr.Prakash R. Rangwala, respondent no.2(d) present.
Mr.R.T. Parekh for respondent nos.3(a) to 3(d).
Mr.Deokar, 1st Asstt. to Court Receiver with Mr.S.N.Naik and Mr.K.I.Patel, Representatives of Court Receiver (present).

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CORAM : A.M. KHANWILKAR, J.

DATE : MARCH 8, 2007.

P.C.

Heard the counsel for the parties.

2. This Appeal from Order takes exception to the

judgement and order passed by the trial Court dated 13.1.2006 on Notice of Motion no.4719 of 2001 and the Court Receiver's report dated 9.12.2003. The Court below has found as of fact that the appellant did not enter into agency agreement nor paid the royalty amount to the Court Receiver as per the agency agreement and instead created third-party rights in the premises which were in possession of the Court Receiver on and from February 1989 in terms of the order dated 25.1.1989. To get over this position, the counsel for the appellant would rely on the receipt at page 108 which indicates that the appellant deposited Rs.39,960/- in terms of the order dated 11.8.2005 passed on Notice of Motion filed by him being Notice of Motion no.3915 of 2004. The payment so made by the appellant will be of no avail. For the Court Receiver submitted the report on 9.12.2003 about the wilful default committed by the appellant in complying with the Court's order dated 25.1.1989 and instructions issued by the Court Receiver regarding execution of the agency agreement and payment of royalty amount. No reason is forthcoming as to what prevented the appellant from complying the requisition of the Court Receiver for entering the agency agreement and paying royalty amount since 1989 till 2003 when the Court Receiver was forced to file report in December 2003 requesting the Court to pass appropriate orders so as to terminate the agency agreement in favour

of the appellant. Even after filing of the report in December 2003, no attempt has been made by the appellant to indicate good reason which prevented the appellant from paying the amount towards royalty from 1989 till 2003 and to execute the agency agreement. Thus understood, no fault can be found with the opinion recorded by the Court below that the appellant was not entitled for any discretionary relief from the Court. The fact that the appellant subsequently in 2005 deposited a sum of Rs.39,960/- pursuant to the order passed by the lower Court on 11.8.2005 on the Notice of Motion taken out by the appellant, being Notice of Motion no.3915 of 2004 will be of no consequence.

3. Accordingly, this appeal fails and the same is dismissed.

A.M. KHANWILKAR, J.